

KIRSTEN K. MADSEN
840 Helena Ave.
Helena, MT 59601
Telephone: (406) 444-4328
Email: kirsten.madsen@mt.gov

MAXON R. DAVIS
DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.
The Milwaukee Station, Third Floor
101 River Drive North
P.O. Box 2103
Great Falls, Montana 59403-2103
Telephone: (406) 761-5243
Facsimile: (406) 761-4126
Email: max.davis@dhhtlaw.com

Counsel for Defendant Larry Pasha

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DEWAYNE BEARCHILD,

Plaintiff,

v.

LARRY PASHA,

Defendant.

Case No. CV 14-00012-H-DLC

**MOTION TO SEAL CERTAIN
EXHIBITS ATTACHED TO
DOCKET ENTRIES 358 AND 364**

Defendant Larry Pasha moves this Court for an order directing that the confidential PREA Records attached as trial exhibits to Docket Entries 358 and 364 be sealed; **specifically, Docs. 358-1 through 358-8, as well as Docs. 364-3 and 364-9 through 364-13.**

As explained more fully in the supporting brief filed herewith, the basis for this motion is that the foregoing documents are all confidential PREA Records offered as trial exhibits (both refused and admitted) which this Court previously directed be filed under seal. (*See* Doc. 160 (protective order (July 21, 2016)), Doc. 190, at 10-11 (amended protective order (Nov. 30, 2016)); Doc. 268, at 15, 244 (Trial Trans., Vol. II (July 12, 2017), 305:15-18, 534:4-19)). The documents appear to have been added by the Clerk's office and inadvertently not marked as sealed, a fact not identified until last Friday (Sept. 9).

Although Mr. Bearchild is unrepresented in this district court matter (Docs. 382, 383), he was appointed counsel to handle his appeal of this matter to the Ninth Circuit (Doc. 389). While his appellate counsel has not entered an appearance in this matter, out of an abundance of caution,¹ the undersigned contacted his attorneys immediately upon learning of these unsealed documents to ask whether there was any opposition to this motion. Counsel for Mr. Bearchild stated on Friday (Sept. 9) they would relay the inquiry to their client as a courtesy but reminding that they do not represent him in this matter; and stating that, if he permitted, they would report back today whether this motion was opposed. The undersigned agreed to wait until this afternoon to file this motion in the hopes of hearing from Plaintiff.

¹ *See* Mont. R. Prof. Conduct 4.2 (Communication With Person Represented By Counsel). *See also* D. Mont. L.R. 7.1(c)(1) (requirement to contact other parties; requirement not applicable to self-represented prisoner).

According to information relayed to the undersigned from Mr. Bearchild's appellate counsel today, "Mr. Bearchild is not taking a position on your motion to seal the documents publicly filed by the Court in the District of Montana case. And to be clear, that does not reflect a substantive concession by Mr. Bearchild regarding the question of whether the documents should remain under seal."²

Because Plaintiff takes no position but does not substantively concede the relief sought by this motion, a supporting brief is filed separately, and no proposed order is provided. L.R. D. Mont. 7.1(c)(3), (d)(1)(A).

DATED this 12th day of September, 2022.

Counsel for Defendant Larry Pasha

/s/Kirsten K. Madsen

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² Mr. Bearchild's counsel also add, that "As a reminder, we are not counsel to Mr. Bearchild in the District of Montana, and he is currently proceeding pro se with respect to any proceedings in that case, including the motion to seal you mentioned below. We are relaying this message for the convenience of Mr. Bearchild but are not acting as his attorneys in doing so."

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing document with the clerk of the court for the United States District Court for the District of Montana, using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that I caused a copy of the foregoing *Motion To Seal Certain Exhibits Attached To Docket Entries 358 And 364* to be served on the following persons by the following means:

1 CM/ECF
2, 3 Mail

1. Clerk, U.S. District Court
2. Dewayne Bearchild³
807 Piegan Street
P.O. Box 450
Browning, MT 59417
3. Dewayne Bearchild⁴
601 2nd Ave. N.
Great Falls, MT 59401

By: /s/ Kirsten K. Madsen
KIRSTEN K. MADSEN
Attorney for Defendant

³ Per Doc. 382-2, at 2.

⁴ Per Doc. 386, at 2.